IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 23233 of 2004

Between:

Ch.Papa Rao, s/o.Ch.Srinivasa Rao,

Aged 55 years, occ: Deputy Superintending

Engineer (under suspension), S.M.I. Division,

Rampachodavaram,

East Godavari District.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, rep. by its

Principal Secretary to Government,

Irrigation & CAD (Ser.VI(1) Department,

A.P. Secretariat, Hyderabad.

2. The Engineer-in-Chief,

Administration Wing,

Irrigation & CAD Department,

Erra Manzil, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of mandamus declaring the action of the first respondent in issuing the impugned order bearing G.O.Rt.No.821, I and CAD (Ser.VI(1) Dept., dt.16.7.2004 and rejection of the interim relief by an order dated 27.10.2004 in O.A.No.4300 of 2004 of Hon'ble A.P. Administrative Tribunal as arbitrary, illegal and set aside the same and pass such other order or orders.

Counsel for the Petitioner:MR.S.SATYAM REDDY

Counsel for the Respondents : GP FOR SERVICES II

The Court at the admission stage made the following :

ORDER: (per Hon'ble Sri Justice G.Bikshapathy)

The Writ Petition is filed assailing the order passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.4300/2004 dated 27-10-2004.

2. The petitioner who was working as Deputy Superintending Engineer was suspended by the Government by G.O.Rt.No.821, Irrigation & CAD (Ser.VI(1) Department dated 16-7-2004. The said order came to be challenged before the A.P. Administrative Tribunal. The A.P. Administrative Tribunal refused to interfere with the order assailed and admitted the O.A., but however the Tribunal observed that no interim relief can be granted. Challenging the said order, the

present Writ Petition has been filed.

3. The learned Counsel for the petitioner submits that a criminal case in respect of alleged possession of disproportionate assets to the known sources of income of the petitioner has been registered against him in Cr.No.27/2002 on 5-11-2002 *suo motu* by Anti-Corruption Bureau, Eluru Range, Eluru, West Godavari District and investigation was also completed and the petitioner was given statutory notice dated 19-6-2004. The learned Counsel also submits that in view of the guidelines issued by the Government in Memo No.596/Spl.B/2000-6, dated 10-6-2002, the petitioner cannot be placed under suspension inasmuch as there was no recommendation by the Director General of Anti-Corruption Bureau which is necessary in cases of Government servants acquiring disproportionate assets to their known sources of income. He also placed reliance on a decision of this Court in W.P.No.2514/2004 dated 16-2-2004 wherein similar issue was discussed and order of suspension was set-aside.

4. The learned Government Pleader for Services-II however submits that since the petitioner was involved in A.C.B. case, necessarily he has to be placed under suspension and the impugned order of the Government cannot be said to be without jurisdiction.

5. We have heard the learned Counsel for the petitioner and the

learned Government Pleader for Services-II.

6. It is not in dispute that Anti-Corruption Bureau has conducted investigation right from the year 2002 and statutory notice was also issued on 29-6-2004. Further, we find that in respect of the cases registered for possessing disproportionate assets to the known sources of income, the Government have clarified the issue in Memo No. 596/Spl.B/2000-6, dated 10-6-2002 wherein it is clearly stated that it is open for the authorities to place the employee under suspension on the recommendation of the Director General of Anti-Corruption Bureau. We directed the learned Government Pleader for Services-II to get instructions as to whether there is any recommendation by the Director General of the Anti-Corruption Bureau in this regard. Though the learned Government Pleader could not get instructions, he still submits that inasmuch as the case is pending, suspension can be resorted to.

7. We are unable to accept with the contention of the learned Government Pleader for Services-II. The said issue was also considered by this Court in W.P.No.2514 of 2004 by order dated 16-2-2004 referred to above. It is incumbent upon the authorities to consider whether suspension is warranted keeping in view the facts and circumstances of each case. Inasmuch as the Director General of Anti-Corruption Bureau has not recommended suspension of the petitioner and the enquiry was also completed, we do not find any

prima facie case to continue the petitioner under suspension. Under these circumstances, we set aside the order of the Tribunal and suspend the orders issued by the Government in G.O.Rt.No.821, Irrigation & CAD (Ser.VI(1) Department dated 16-7-2004 pending disposal of the O.A. Accordingly we allow the Writ Petition. However, we leave it open to the authorities to post the petitioner to any other non-focal point if they so choose. No costs.

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Justice G.Bikshapathy

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Justice P.S.Narayana

Date : 28-12-2004

L.R. copy to be marked : YES / NO

Note: Furnish copy in (2) days.

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Twenty eighth day of December Two Thousand and Four.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Principal Secretary to Government,

Irrigation & CAD (Ser.VI(1) Department,

Government of Andhra Pradesh,

A.P. Secretariat, Hyderabad.

2. The Engineer-in-Chief,

Administration Wing,

Irrigation & CAD Department,

Erra Manzil, Hyderabad.

3.2CCs to Government Pleader for Services-II,

High court of Andhra Pradesh,

High Court Buildings,

Hyderabad (OUT)

4.2CD copies